

Public Law 87-346

AN ACT

October 3, 1961
[H. R. 6775]

To amend the Shipping Act, 1916, as amended, to authorize ocean common carriers and conferences thereof serving the foreign commerce of the United States to enter into effective and fair dual rate contracts with shippers and consignees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Shipping Act, 1916, is amended by adding after section 14a a new section to read as follows:

Shipping Act,
1916, amendments.
40 Stat. 903.
46 USC 842.

Foreign com-
merce.
Common carri-
ers, dual rate con-
tracts.

"SEC. 14b. Notwithstanding any other provisions of this Act, on application the Federal Maritime Commission (hereinafter 'Commission'), shall, after notice, and hearing, by order, permit the use by any common carrier or conference of such carriers in foreign commerce of any contract, amendment, or modification thereof, which is available to all shippers and consignees on equal terms and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any fixed portion of his patronage to such carrier or conference of carriers unless the Commission finds that the contract, amendment, or modification thereof will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and provided the contract, amendment, or modification thereof, expressly (1) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide as much space as the contract shipper shall require on reasonable notice; (2) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier: *Provided, however,* That it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself, or with the same intent permits himself to be divested, of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract; (4) does not require the contract shipper to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available; (5) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of contract law: *Provided, however,* That the contract may specify that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling; (6) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (7) provides for a spread between ordinary rates and rates charged contract shippers which the Commission finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; (8) excludes cargo of the contract shippers which is loaded and carried in bulk without mark or count except liquid bulk cargoes, other than chemicals, in less than full shipload lots: *Provided, however,* That upon finding that economic factors so warrant, the Commission may exclude from the contract any commodity subject to the



foregoing exception; and (9) contains such other provisions not inconsistent herewith as the Commission shall require or permit. The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. The carrier or conference of carriers may on ninety days' notice terminate without penalty the contract rate system herein authorized, in whole or with respect to any commodity: *Provided, however,* That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior permission by the Commission in accordance with the provisions of this section. Any contract, amendment, or modification of any contract not permitted by the Commission shall be unlawful, and contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission; before permission is granted or after permission is withdrawn it shall be unlawful to carry out in whole or in part, directly or indirectly, any such contract, amendment, or modification. As used in this section, the term 'contract shipper' means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section."

Notice and hearing.

SEC. 2. Section 15, Shipping Act, 1916, is amended to read as follows:

39 Stat. 733.
46 USC 814.

"SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

Filing of agreements, etc.

"The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to con-

Discriminatory agreements, disapproval.

ference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

"The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

"Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 14b of this Act which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 18(b) hereof and with the provisions of any regulations the Commission may adopt.

"Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', and amendments and Acts supplementary thereto.

"Whoever violates any provision of this section or of section 14b shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

SEC. 3. Notwithstanding the provisions of sections 14, 14b, and 15, Shipping Act, 1916, as amended by this Act, all existing agreements which are lawful under the Shipping Act, 1916, immediately prior to enactment of this Act, shall remain lawful unless disapproved, canceled, or modified by the Commission pursuant to the provisions of the Shipping Act, 1916, as amended by this Act: *Provided, however*, That all such existing agreements which are rendered unlawful by the provisions of such Act as hereby amended must be amended to comply with the provisions of such Act as hereby amended, and if such amendments are filed for approval within six months after the enactment of this Act, such agreements so amended shall be lawful for a further period of not to exceed one year after such filing. Within such year the Commission shall approve, disapprove, cancel or modify all such agreements and amendments in accordance with the provisions of this Act.

SEC. 4. Section 18, Shipping Act, 1916, is hereby amended as follows:

(a) Insert "(a)" immediately after the section number "18".

(b) Add the following subsection 18(b):

"(b)(1) From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open

Ante, p. 762.

Infra.

26 Stat. 209.
15 USC 1-7.

28 Stat. 570.
15 USC 8-11.

Existing agreements,
modifications,
etc.

Filing of carrier
rates, etc.

to public inspection tariffs showing all the rates and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

"(2) No change shall be made in rates, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of such carriers be instituted, except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of publication and filing thereof with the Commission, and each such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, charges, classifications, rules or regulations as changed are to become effective: *Provided, however,* That the Commission may, in its discretion and for good cause, allow such changes and such new or initial rates to become effective upon less than the period of thirty days herein specified. Any change in the rates, charges, or classifications, rules or regulations which results in a decreased cost to the shipper may become effective upon the publication and filing with the Commission. The term "tariff" as used in this paragraph shall include any amendment, supplement or reissue.

Rate changes.

"(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by any device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs.

"Tariff".

Collection of specified rates only.

"(4) The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published and filed; and the Commission is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

"(5) The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

"(6) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action."

Penalty.

SEC. 5. Section 20, Shipping Act, 1916, is amended by changing the period at the end thereof to a semicolon and adding the following: "or

39 Stat. 735.
46 USC 819.

to prevent any common carrier by water which is a party to a conference agreement approved pursuant to section 15 of this Act, or any other person subject to this Act, or any receiver, trustee, lessee, agent, or employee of such carrier or person, or any other person authorized by such carrier to receive information, from giving information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful."

Filing of protests.
49 Stat. 1518.

SEC. 6. Section 16 First, Shipping Act, 1916 (39 Stat. 734; 46 U.S.C. 815), is hereby amended by deleting the period at the end thereof and adding the following: " : *Provided*, That within thirty days after enactment of this Act, or within thirty days after the effective date or the filing with the Commission, whichever is later, of any conference freight rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within one hundred and eighty days from the date of the issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule, or regulation."

Rules and regulations.

SEC. 7. The Shipping Act, 1916, is hereby amended by inserting a new section 43 reading as follows:

"SEC. 43. The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act."

Approved October 3, 1961.

Public Law 87-347

AN ACT

October 3, 1961
[H. R. 84]

To stabilize the mining of lead and zinc by small domestic producers on public, Indian, and other lands, and for other purposes.

Lead and zinc mining.
Stabilization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and directed to establish and maintain a program of stabilization payments to small domestic producers of lead and zinc ores and concentrates in order to stabilize the mining of lead and zinc by small domestic producers on public, Indian, and other lands as provided in this Act.

SEC. 2. (a) Subject to the limitations of this Act, the Secretary shall make stabilization payments to small domestic producers upon presentation of evidence satisfactory to him of their status as such producers and of the sale by them of newly mined ores, or concentrates produced therefrom, as provided in this Act. Payments shall be made only with respect to the metal content as determined by assay.

(b) Such payments shall be made to small domestic producers of lead as long as the market price for common lead at New York, New